

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:11-CR-00258-F-1  
No. 5:13-CV-00412-F

DONNA DICKENS,	)	
	)	
Petitioner,	)	
	)	<u>ORDER</u>
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

This matter is before the court on the Government's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure [DE-49]. In support of its Motion to Dismiss, the Government has submitted the Affidavit of Raymond C. Tarlton and emails between Dickens and Tarlton. [DE-50-1 at 1-7.]

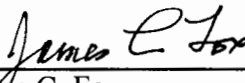
As a general rule, extrinsic evidence should not be considered when evaluating a Rule 12(b)(6) motion to dismiss. *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004). A court can convert a Rule 12(b)(6) motion into a motion for summary judgment so as to consider matters outside the pleadings. *Bosiger v. U.S. Airways*, 510 F.3d 442, 450 (4th Cir. 2007). However, if the court elects to make the conversion, it must assure that the parties are on notice of the changed status of the motion. *Davis v. Zahradnick*, 600 F.2d 458, 460 (4th Cir. 1979).

In this case, the Government's Motion to Dismiss references and relies upon Tarlton's Affidavit and the emails between Dickens and Tarlton. [DE-50 at 3.] The court concludes that conversion is warranted and Dickens is entitled to notice.

In light of the foregoing, the court advises Dickens that it intends to construe the Government's Motion to Dismiss as one seeking summary judgment and will consider the exhibits attached to the Motion to Dismiss. *See Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975). Dickens is further advised that she should respond to the Government's motion with affidavits, declarations, citations to particular parts of the record, or other material in such a manner so as to persuade this court that a genuine issue of material fact remains to be determined. Dickens shall file her response to the Government's motion within twenty-one days. The Government may file a reply, if any, within seven days thereafter.

SO ORDERED.

This the <sup>1</sup>12 day of August, 2014.

  
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James C. Fox  
Senior United States District Judge